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A Report to the Montana Legislature

Performance Audit

Montana's Subsequent Injury Fund

Department of Labor and Industry

August 2009

Legislative Audit Division

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Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, journalism, accounting, economics, sociology, finance, political science, english, anthropology, computer science, education, international relations/security, and chemistry.

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August 2009

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of the Subsequent Injury Fund managed by the Employment Relations Division of the Department of Labor and Industry.

This report provides the legislature with information about department activities to encourage the hiring of disabled workers by providing employer cost reimbursements if those employees are injured in the future. This report includes a recommendation for improving management controls associated with determining employer assessments, preventing abuse, and controlling employer costs at the Department of Labor and Industry.

We wish to express our appreciation to department management and staff for their cooperation and assistance during the audit.

Respectfully submitted,

Tori Hunthausen, CPA
Legislative Auditor

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Keith Messmer, Chief, Workers' Compensation Regulation Bureau

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REPORT SUMMARY

Subsequent Injury Fund

The Department of Labor and Industry effectively manages the Subsequent Injury Fund, but improving management controls associated with assessments and anomaly identification could enhance the program.

Audit Findings

The Subsequent Injury Fund (SIF), as a component of the state's Workers' Compensation program, is managed by the Department of Labor and Industry. The SIF is intended to help disabled workers obtain work by reducing an employer's long-term financial liability if that worker is reinjured on the job. In Montana, the SIF program will reimburse employers if a SIF certified worker experiences a workers' compensation claim that lasts more than 104 weeks. The SIF program funds these reimbursements solely from assessments against the state's employers. Since 1950, Montana employers have been reimbursed $7.1 million by the SIF program for injuries to SIF certified workers.

Two objectives were identified for this performance audit.

- Does the department have sufficient management controls in place to ensure compliance with Montana statutes in determining SIF assessments and detecting/deterring potential abuse to control costs?
- Is the department in compliance with applicable Health Insurance Portability and Accountability Act (HIPAA) requirements as it relates to the SIF program?

We found that the department complies with statutes related to calculating SIF assessments. However, lack of written procedures to guide the assessment process increases the workload of staff assigned the task of calculating the SIF assessment. There is also a lack of documentation of management's approval of assessment decisions, which would also assure statutory requirements are met. The department has initiated procedures to correct both of these issues.

During our audit activities, we found instances where anomalies existed in SIF data. While these anomalies did not appear to result in increased assessments or reimbursement of fraudulent claims, the program did not have procedures in place to detect the anomalies. For example, we found the program did not screen their database for deceased workers. Once a screen was conducted, 392 certified workers were identified as deceased and 68 names did not match social security numbers on file.

The department has implemented changes to its database that automatically identify Workers' Compensation claims filed by SIF certified workers. There was a concern this automatic notification process might violate HIPAA regulations that protect individuals from disclosure of medical conditions. We found the department complies with HIPAA disclosure requirements and is careful to ensure notifications do not identify the nature of a SIF certified employee's disability.

Audit Recommendations

The SIF program is a small program that serves a limited population of employers. However, each employer has the same potential for reimbursement by the SIF program in the future. As such, each employer should be able to expect that the program is complying with statutory requirements, has effective oversight, and is protected against unnecessary loss. Management controls can be improved in those areas that have the greatest impact on employer costs, namely SIF assessments and anomaly detection.

We recommend the Department of Labor and Industry improve management controls to ensure:

- Written procedures are established for determining SIF assessments.
- Documentation of management approval of SIF assessments.
- SIF data is screened annually to identify anomalies.
- Procedures are established to ensure identified anomalies are evaluated and corrected, if necessary, to assure program costs are contained.

Chapter I – Introduction

Introduction

The Legislative Auditor authorized a performance audit of the Department of Labor and Industry's Subsequent Injury Fund. The Subsequent Injury Fund (SIF) is an extension of the Workers' Compensation Program and is intended to encourage the hiring and retention of previously injured or disabled workers by reimbursing employers for costs incurred if those workers are reinjured in the future.

The Department of Labor and Industry (department) is responsible for implementing the Subsequent Injury Fund program. The department delegates those responsibilities to the Workers' Compensation Regulation Bureau within the Employment Relations Division.

Audit Objectives

Objectives for this audit answered the following questions:

- Does the department have sufficient management controls in place to ensure compliance with Montana statutes in determining SIF assessments and detecting and deterring potential abuse to control costs?
- Is the department in compliance with applicable Health Insurance Portability and Accountability Act requirements as it relates to SIF?

Audit Scope and Methodologies

This audit focused on policy issues impacting SIF operations and management issues identified during our audit assessment. The majority of the audit examined program activities since 2000. Earlier records were reviewed to answer the audit objective pertaining to management controls to deter or detect potential abuse and control costs.

To respond to audit objectives, we:

- Reviewed applicable statutes and administrative rules.
- Analyzed available data.
- Reviewed program standard operating procedures.
- Interviewed department staff about procedures and policies.
- Observed activities.
- Interviewed representatives of the three affected plan groups.
- Reviewed available information related to nationwide SIF trends.
- Interviewed other states' SIF representatives.

Management Memorandum

A management memorandum is verbal or written notification to the agency for issues that should be considered by management, but do not require a formal agency response. We issued a management memorandum to the department to clarify program documents and instructional information.

Report Contents

This report is organized into three chapters. Chapter II provides background information about the program. Chapter III provides conclusions and a recommendation related to improving management controls.

During the conduct of this audit, the department actively participated in audit activities and proactively supported the collection of information. In a number of instances, the department initiated positive corrective actions as issues were identified during the audit.

Chapter II – Background and Issues Affecting Subsequent Injury Fund Programs Nationwide

Introduction

New York created the first Subsequent Injury Fund (SIF) in 1916, but other states did not establish their own funds until employers raised concerns about hiring veterans returning from World War II. SIFs were designed to minimize these concerns by establishing a fund to pay the difference between a new occupational injury and any pre-existing disability. SIFs were eventually established in 49 states (Wyoming being the exception) and the District of Columbia. The general purpose of SIF programs was to:

- Encourage employers to hire and retain workers with pre-existing injuries or conditions.
- Provide financial relief to employers for those employees that experience subsequent injuries.

In 1990, Congress passed the Americans with Disabilities Act (ADA), making it illegal to discriminate against someone because of a disability and many states began reconsidering their SIF programs. Since then, 21 states and the District of Columbia have closed their SIF programs, although Oklahoma reinstated their SIF program a few years after it was closed. The three underlying reasons states have elected to close their SIF programs are:

- SIF programs accumulate large unfunded liabilities.
- SIF programs have not proven they encourage employers to hire previously injured workers.
- SIF programs are not thought to be necessary because the ADA addresses employment discrimination against the disabled.

How Montana's SIF program has evolved to eliminate each of these concerns will be discussed in this chapter.

Montana's SIF Program

Montana's SIF program dates back to 1943, although the current program was codified in statutes in 1973. The fund is a component of the Workers' Compensation program and is administered by the Department of Labor and Industry's Employment Relations Division through the Workers' Compensation Regulation Bureau. The purpose of Montana's SIF program is to "assist persons with disabilities become

employed by offering a financial incentive to employers who hire certified workers." The financial incentive comes in the form of employer reimbursement for medical and lost wage costs that last longer than 104 weeks if a SIF certified employee is reinjured on the job. However, this incentive is only available if employees voluntarily enroll in the program, are certified by completing the department's application, and obtain a medical statement of permanent disability. The disability does not have to be the result of an earlier occupational injury, but must result in a "substantial obstacle" to employment when combined with other factors such as age, training, education, experience, or employee's location.

At the end of 2008, database records showed 4,165 certified employees eligible for SIF reimbursement. This total includes workers that have since died and have not been removed from the program's database. Table 1 provides the number of workers certified each year by the program and the cumulative totals.

Table 1
Montana Subsequent Injury Fund
Certified Workers
(1973 - Present)

Year	Certified Workers	Cumulative Total
2003	194	3,229
2004	173	3,402
2005	208	3,610
2006	216	3,826
2007	177	4,003
2008	162	*4,165

*Includes 392 deceased individuals

Source: Compiled by the Legislative Audit Division from Department of Labor and Industry annual reports.

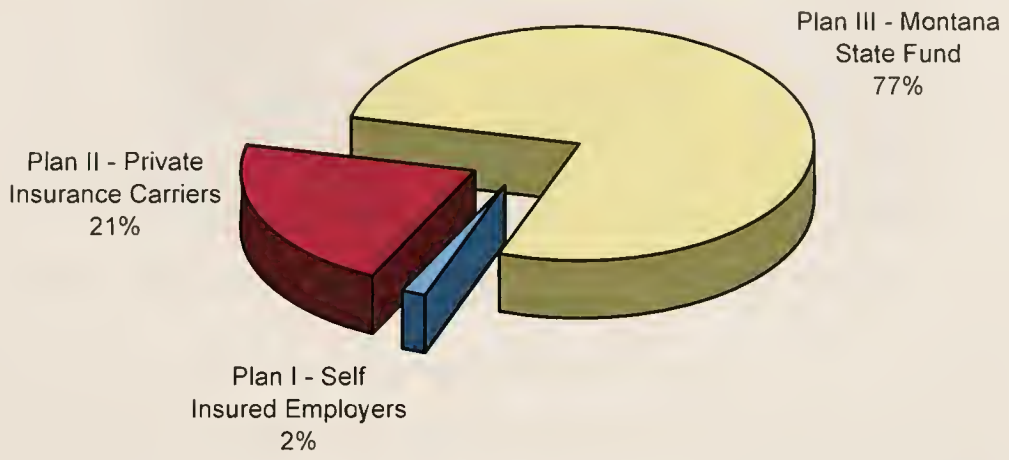
The department has three employees, consisting of a compliance technician and two levels of management (0.77 FTE), that complete the majority of SIF duties. The compliance technician (0.42 FTE) is responsible for the conduct of daily SIF activities, including determining eligibility status. DLI managers (Bureau Chief – 0.2 FTE and SIF Supervisor – 0.15 FTE) are responsible for approving or denying reimbursement claims and setting fee schedules associated with SIF expense reimbursement schedules. Additional departmental staff, specifically accounting, workers' compensation, and database development, participate in SIF activities to a lesser degree.

Funding SIF

All employers within the state are required to participate in the Workers' Compensation program and pay into both the Workers' Compensation Fund and Subsequent Injury Fund. The SIF program receives no other funds from the state. Instead, SIF is funded solely by assessments against employers depending on which of the three employer "plans" they belong to. Plan I employers self-insure their Workers' Compensation and SIF costs. Plan II employers purchase insurance from private insurance companies to

cover Workers' Compensation and SIF costs. Plan III employers purchase insurance from the Montana State Fund. As of July 2009, there were 557 Plan I employers, 7,012 Plan II employers, and 25,072 Plan III employers. Figure 1 represents the percentage of employers in each plan as of July 2009.

Figure 1
Montana Plan Groups and Total Percentage of Employers
(July 2009)

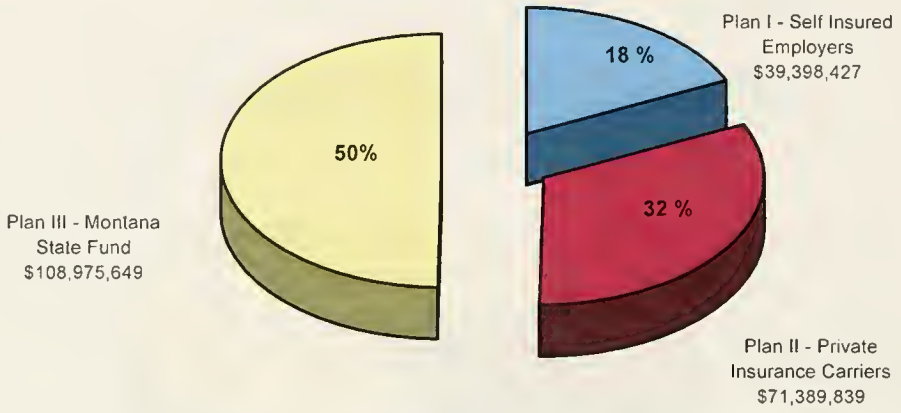


Source: Compiled by the Legislative Audit Division from Department of Labor and Industry data.

Montana's employers fund the SIF program through an assessment process identified in statute. The assessment takes the costs of SIF claims paid during the previous year and adds it to the administrative costs incurred by the department and then subtracts any revenues resulting from interest generated through investments. If this amount is below $1 million, the department can choose to defer making the assessment against employers until the time when the total assessment is more than $1 million. In the past, this assessment "threshold" was lower and resulted in deferred assessments in fiscal years 2001, 2002, 2006, and 2007.

If an assessment is made, each plan group (I, II, or III) pays its portion of SIF costs based on its proportion of all workers' compensation costs, not just SIF costs. This means that for fiscal year 2008, Plan III employers had approximately 50 percent of Worker's Compensation costs and the assessment to Plan III employers would fund 50 percent of the required SIF assessment. The proportion of Workers' Compensation costs for each plan group does not change significantly from year to year. Figure 2 shows the proportion of state's workers' compensation costs experienced by each plan group.

Figure 2
Montana Workers' Compensation Premiums Paid by Plan Groups
(Fiscal Year 2008)



Source: Compiled by the Legislative Audit Division from Department of Labors and Industry records.

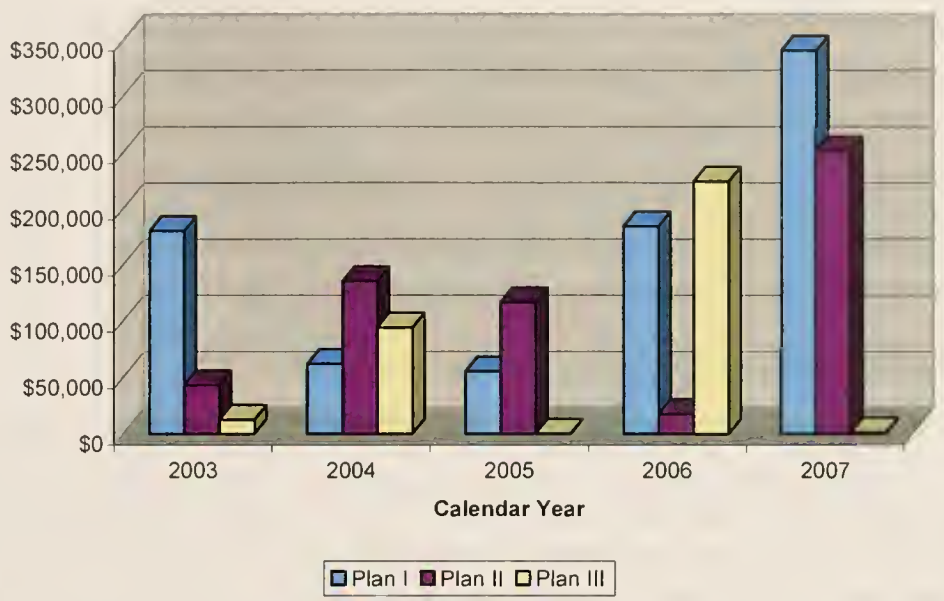
SIF Assessments

How an employer is assessed for SIF costs is dependent on what plan group they belong to. As described above, each plan group pays its share of SIF costs based on the group's proportion of total Workers' Compensation costs. For fiscal year 2008, Plan I employers each paid an average SIF assessment of $160. These assessments ranged from $0.43 to $10,910.38. Nine Plan I employers had no SIF assessments. Plan II and III employers fund the SIF program as a percentage of insurance premiums. For fiscal year 2008, Plan II and III employers were assessed at a rate of $1.13 per $1000 of Workers' Compensation premiums.

SIF Reimbursements

As mentioned earlier, Montana's SIF program reimburses Plan I employers or Plan II and Plan III insurers for costs of injuries to certified workers if the claim is still active after 104 weeks. After 104 weeks, the employer, or the insurance company, continues to pay injury costs, but can submit a claim to the SIF program for reimbursement every six months. Since January 1950, the SIF has reimbursed employers or insurers a total of $7.1 million for injuries to 102 certified workers. Amounts paid to reimburse claims have ranged from $21 to $1,166,906. Figure 3 shows SIF reimbursements by plan group for calendar years 2003 – 2007. Note that no single employer group consistently receives the highest level of reimbursement from the SIF program.

Figure 3
Subsequent Injury Fund Reimbursements to Montana Employer Groups
(2003-2007)



Source: Compiled by the Legislative Audit Division from Department of Labor and Industry data.

Improving Montana's SIF

Montana's SIF program has undergone a number of changes over the years. However, in the last ten years, Montana reached a crossroad for continuing the SIF program. Representatives of Plan II and III employers wanted to eliminate the SIF, but Plan I employers wanted to continue the program. The groups met and, in the end, reached a compromise that was approved by the legislature, who implemented statutory changes to the program and eliminated many of the concerns of the different employer groups. The major elements of this compromise are included in §§39-71-907 and 915, MCA, and included:

- A cap was placed on the reimbursement liability of the SIF. (2007)
- Assessments for Plan II and III employers were tied to Workers' Compensation premiums paid. (2001)
- A provision that only the first $200,000 of any individual SIF claim was included in an employer's liability for SIF costs. (2001)
- Establishing a requirement that SIF assessments be proportional to claims paid on each plan group's losses rather than a flat rate. (2001)
- Establishing a policy that allowed assessments to be deferred to subsequent years if threshold is not met. (2005)

Theses changes were designed to reduce the potential for large increases in employer SIF costs while continuing to maintain the SIF program. Additional details of these changes are provided in the next section.

Effects of Statutory Changes to Montana's SIF Program

The changes agreed to by representatives of Montana's three plan groups addressed both national and local concerns over SIF programs. These changes dealt with the growth in program liability, the difficulty funding this liability, and concerns about fairness. Nationally, growth in SIF program liability has been the primary reason SIF programs have been eliminated in other states. Locally, there were concerns that the SIF program shifted costs from one plan group to another.

Reimbursement Liability is Capped

The primary reason other states have eliminated their SIF programs has been the growth of the program's actuarial liability. Government accounting standards require SIF programs to identify their actuarial liability, which is equal to the potential costs of all claims against the fund. Many of the states that have closed their SIF programs because the actuarial liability grew so large, employers could not keep up with the assessments. For example, Connecticut closed its SIF program in 1996 with an unfunded actuarial liability of more than $6 billion. Georgia's actuarial liability was estimated to be at $970 million in December 2006.

As a result of the agreement reached between the different plan groups, a cap has been placed on reimbursements from Montana's SIF program. Although the SIF program still has to annually report its actuarial liability, which in the 2008 Comprehensive Annual Financial Report is $3.56 million, its statutory liability is significantly less. The statutory cap is identified in §39-71-907(2), MCA, and it limits reimbursements from the SIF program to the fund's current balance plus any assessments that can be made in the following year. Reimbursements that exceed this statutory limit will not be paid. Because the SIF program is a reimbursement program, the state never assumes liability for the claim.

How Proportionality and Fairness Were Addressed

Other statutory changes to the SIF program addressed concerns about fairness between plan groups and between employers themselves. To ensure one group of employers was not passing their SIF injury costs to the other groups, each plan is assessed for SIF support based on their proportion of all workers' compensation costs. If an employer has a history of higher injury costs, and therefore higher insurance premiums, then tying SIF assessments to insurance premiums means that employer will pay higher SIF assessments.

Protection From Catastrophic Claims

To prevent a single catastrophic accident from significantly increasing employers' SIF assessments, only the first $200,000 of any individual workers' compensation claim is included in the SIF assessment calculations. For example, if the SIF program reimbursed a claim for $500,000, adding that amount to the next year's assessment calculation could cause a significant increase in assessment rates for the affected employer plan group.

Deferring SIF Assessments

The last change to occur was the department's authority to defer making SIF assessments if a defined threshold is not met. As the previous section on SIF assessments showed, assessments of individual employers can be very small. The intent of this change was to reduce the workload associated with recording and tracking these small amounts for employers, insurers, and the department.

Other National Issues Affecting Montana's SIF Program

At the beginning of this chapter, three issues were identified as being reasons for closing SIF programs. Concerns about unfunded liability have been addressed through a statutory cap on Montana's SIF program. The other issues included identifying if SIF programs result in employers hiring injured workers and if there is still a need for SIF programs in light of protections provided by the ADA.

SIF Program Awareness and its Effectiveness

SIF programs were initially designed to encourage employers to hire and retain injured workers. Montana's program has a goal of "assisting persons with disabilities obtain employment by offering financial incentives to employers who hire certified workers." It is easy to show that the program is offering financial incentives to employers that hire certified workers. Since January 1950, SIF has reimbursed Montana employers and insurers over $7.1 million for qualified injuries to SIF certified workers. However, it is more difficult to determine if injured workers are being hired because of the SIF program.

During our review, we found there was a general lack of awareness about the SIF program among employees and employers. The ramification of limited program awareness is that employees may not become certified and employers cannot seek cost reimbursement if future injuries occur. The department modified its database to notify employers when a certified employee has filed a Workers' Compensation claim in an effort to improve employers' ability to seek reimbursement for SIF eligible claims. Without better awareness of the SIF program, employers or insurers could bear the full cost of these injuries without benefit of the SIF program.

There is also limited outreach conducted to inform either workers or employers of the SIF program even though SIF is a component of the Workers' Compensation program. In contrast, the department regularly conducts outreach for the Workers' Compensation program and statute requires Workers' Compensation program information is posted in all workspaces. Adding SIF information with existing Workers' Compensation outreach would open opportunities for SIF managers to gather information and help determine program effectiveness. Audit discussions with department management indicate the department is open to conducting additional outreach, however industry input will be needed to further promote the program.

Determining Program Cost Effectiveness

Although the department administers the SIF program, the state does not provide any other support for the program. All program costs are passed on to employers through the administrative portion of the assessment calculation. Annual costs to administer this program are approximately $50,000, which increases each employer's costs about $0.60. Therefore, there is no cost effectiveness component associated with this program. This is strictly a cost reimbursement program, employers agreed to support through their funding. Therefore, we did not examine cost effectiveness, but did look at potential cost containment in the next chapter.

ADA, the Montana Human Rights Act, and SIF Programs

The passing of the ADA in 1990 has been identified as another reason to eliminate SIF programs. The ADA prohibits employers with more than 15 employees from discriminating against individuals because of a disability. In fact, the ADA requires employers to make reasonable accommodations to hire disabled workers if they are otherwise qualified to work. No financial assistance is included in the ADA to offset the cost of making required accommodations for disabled employees. However, the tax code provides some relief to employers who incur costs for complying with the ADA. The Montana Human Rights Act mirrors these requirements, with the exception that Montana's Act applies to all employers, regardless of number of employees. The Montana SIF program complements the ADA because it reimburses employers for costs if they hire certified a worker who is reinjured on the job.

CONCLUSION

The SIF is a reimbursement program that limits liability to the state. By changing statutes, the legislature approved the compromise worked out between the various employer group representatives in support of the program's continued existence.

Chapter III – Improving Subsequent Injury Fund Controls

Introduction

During our audit assessment of the Subsequent Injury Fund (SIF) program, we generally found the program to be well managed. Although it constitutes a very small program at the Department of Labor and Industry, program staff are enthusiastic about the program and support the concepts of SIF. Staff ensures certification applications are reviewed expeditiously and reimbursements to employers made quickly. However, we identified areas warranting additional audit work. This chapter presents the results of audit work and provides conclusions and an audit recommendation needed to further improve management controls. The following areas are discussed:

- Compliance with statutes assessing fees on employers and insurers.
- Controls to detect and deter potential abuse and control costs.
- Compliance with the Health Insurance Portability and Accountability Act (HIPAA).

SIF Assessment Calculations Comply With Statutes

As noted in Chapter II, SIF is funded through an assessment against the three employer plan groups. Section 39-71-915, MCA defines what is to be included in determining the SIF assessment, what threshold must be met to defer the assessment and how deferred assessments are to be accounted for in subsequent year's calculations, and how the assessment is allocated among the three plan groups.

During the audit, we reviewed state law and examined program assessment records to determine whether assessments were calculated according to statutory provisions. We found the department complies with all elements of statute related to calculating the assessment, deferring the assessment, and allocating the assessment between plan groups. However, we found a number of areas where the department could improve its practices to facilitate oversight and clearly document assessment decisions.

Improving Documentation Will Facilitate Oversight and Assure Statutory Compliance

During audit activities, we found that there are no written procedures to guide development of the SIF assessment and no documentation of management's concurrence with SIF assessment calculations or assessment deferments. Development of written procedures and management review and approval of key decision points are generally considered common management practices. These practices help establish continuity

and consistency during staffing changes. They also assure compliance with mandatory activities, such as statutory requirements.

Written procedures have been developed for some SIF activities, but not the assessment process. The lack of written procedures for the assessment process resulted in newly assigned staff having to reinvent the process by picking through previous year's calculations and trying to recreate the results. This resulted in less time to do other time-critical tasks.

Reviewing previous year's assessment calculations identified a complex procedure that was difficult to understand without a detailed awareness of the process. Documentation of previous assessment calculations did not provide simplified summary information, which would have allowed management to easily identify program expenses, administrative costs, revenue generated, assessment overpayments from the previous year, or previously deferred assessments; all items that are statutorily required to be included in the SIF assessment calculations. There are indications that management was briefed on assessment calculations, but no indication that management approved the assessments or ensured all statutory elements were included in the assessment.

Conclusion

While the department complies with statutes related to calculating SIF assessments, improvements to management controls will improve oversight and clearly document management's approval of assessment decisions.

Controls to Detect and Deter Potential Abuse and Control Costs

During the audit, we examined the department's controls for detecting and deterring potential abuse and controlling costs for employers. We reviewed the department's activities to assess whether program staff screen collected information for anomalies; anomalies being potential indicators of abuse or increased costs. We also considered management actions to rectify inconsistencies in its data to determine the source of the problem. In addition, we discussed processes used to identify anomalies in the program's database. We found there are few controls in place to detect and deter potential abuse.

Management relies on two control mechanisms to protect the SIF program from potential abuse and increasing costs. First, the program is a reimbursement program and employers and insurers have implemented their own programs to prevent abuse.

Second, the program relies on the documentation necessary to support a claim reimbursement to identify abuse. To prevent department employees from abusing the program, the department has established internal program controls to ensure proper oversight. For example, it is possible for a "ghost" employee to be entered into the SIF database. However, payment on any claim requires verification of documentation and approval by a higher level of management.

Analysis of available information can identify inconsistencies or situations where information appears to vary from normal activity. For example, two different people using the same social security number or a social security number that appears inappropriate for the age of the individual may indicate a need for further review. In addition, while employers have established their own programs for preventing Workers' Compensation abuses by employees, an employee filing a claim against two different employers would only be detected by the department. These conditions can indicate a need to improve quality control when making entries in the database or confirming applicant information. Anomalies do not necessarily indicate the presence of abuse. However, without identifying the cause of the anomaly, management cannot correct the condition that led to the anomaly or assure costs are contained for employers.

Data Indicates Anomalies Exist

When we conducted an analysis of the program's database, we identified a number of anomalies. Whether these anomalies would have been identified through the normal SIF reimbursement process is unknown since none of the anomalies involved a SIF claim. Some of the anomalies were found in information that is no longer required to be collected. The others were found in current information on SIF certified workers. We found:

- 23 of 101 SIF reimbursement claims since 1979 were initiated from one employer, representing an anomaly the department was not aware of.
- The current SIF database contained 392 individuals that, according to the Social Security Administration (SSA), are deceased.
    - Existence of deceased individuals in the database could increase the reported actuarial liability of the SIF.
- 68 additional records involved Social Security Numbers (SSN) that did not match records in the SSA database.
    - 44 of the 68 SSNs did not match the name on file with SSA, the SSN had not been issued, or the SSN did not match the age of the individual. The existence of these types of SSN errors could indicate other types of abuse, such as identify theft.

Anomaly Detection in the SIF Program Database

The program recently transferred its SIF data into a new database as a module of the department's Workers' Compensation database. The Montana Workers' Compensation Act contains general administrative provisions to which the department must adhere. Section 39-71-225 (2)(a), MCA provides, in part that the department must collect data to provide performance information to enable the state to enact remedial efforts to control abuse and enhance cost control. The new database has the capability to screen the database to identify anomalies, such as multiple individuals at a single address, or the same name having multiple addresses, but the capability has not been activated.

Funding for Anomaly Detection

Department management states that the SIF program does not have funding to conduct anomaly detection. However, the administrative costs of the program are identified annually and included in SIF assessment calculations and paid by the state's employers. As noted earlier, the Workers' Compensation database was modified to automatically identify Workers' Compensation claims filed by SIF certified employees so employers could be notified of potential reimbursement eligibility. The cost to make this modification was included in the SIF assessment. Program managers stated that the costs of the SSN records screen, which cost $301, will be included in the program administrative costs.

Program Integrity

Department management relies on employers and insurers to protect the SIF program from abuse and control costs for employers. In certain situations, this reliance is wholly justified. Employers and insurance carriers have implemented a number of programs to prevent employees from abusing the Workers' Compensation system. However, employers pay a fee to administer the program and protect it from abuses that drive up their costs. Anomalies that result in increased reimbursements also result in higher assessments. Additional efforts to identify and prevent inconsistencies can enhance the program's integrity.

CONCLUSION

Improvements in management controls intended to identify anomalies in SIF program information can reduce the potential for abuse and control program costs.

Improving Management Controls Will Improve the SIF Program

The SIF program is a small program that serves a limited population of employers. However, each employer has the same potential for becoming a SIF program recipient in the future. As such, each employer should be able to expect that the program is complying with statutory requirements, has effective oversight, and is protected against unnecessary loss. Management controls can be improved in those areas that have the greatest impact on employer costs, namely SIF assessments and anomaly detection.

RECOMMENDATION #1

We recommend the Department of Labor and Industry improve management controls to ensure:

A. *Written procedures are established for determining Subsequent Injury Fund assessments.*

B. *Documentation of management approval of Subsequent Injury Fund assessments.*

C. *Subsequent Injury Fund data is screened annually to identify anomalies.*

D. *Procedures are established to ensure identified anomalies are evaluated and corrected, if necessary, to assure program costs are contained.*

The Department Complies with HIPPA Disclosure Regulations

The SIF program implemented a significant change to employer requirements following the 2005 legislative session. Prior to 2005, employers were required to notify the department that a SIF certified worker had been hired in order to qualify for future SIF reimbursement. Due to practical limitations on employers' ability to gather this type of information, this requirement was eliminated in 2005. The Americans With Disabilities Act imposed limitations on employers against asking employees about their disability status. However, for an employer or insurer to seek reimbursement from the SIF program, the employer or insurer still had to know if the worker was SIF certified.

New database software allows the SIF program to compare its database of SIF certified workers with claims for Workers' Compensation benefits and notify the employer or insurer of the potential for future cost reimbursement. Because this process notified employers and insurers of the disability status of the worker, there was concern that

this notification might violate federal HIPAA regulations. We examined this issue during the audit.

We reviewed HIPAA regulations and found an exemption to HIPAA disclosure requirements is provided if notification is made to support claims for Workers' Compensation benefits and notification is included in statutes associated with the state's Workers' Compensation program. In Montana, the authorization to provide notification of a certified workers' disability status is provided for in §39-71-225, MCA. HIPAA regulations also state notification will be limited to the minimum required information to support the workers' compensation claim. The notification made by the SIF program only indicates that the employee is a SIF certified worker and that future employee benefit costs might be reimbursed by the SIF program. No indication of what type of disability the certified worker has is provided in the notification. Audit work shows notification to an employer of a workers' SIF certification status is made in compliance with HIPAA regulations and is limited to the minimum information necessary to support a SIF reimbursement claim at a later date.

CONCLUSION

The department complies with HIPAA disclosure provisions as it relates to the SIF program.

Department of Labor and Industry

Department Response

Montana
Department of Labor and Industry
Commissioner's Office

BRIAN SCHWEITZER, GOVERNOR
KEITH KELLY, COMMISSIONER

August 18, 2009

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LEGISLATIVE AUDIT DIV.

The Employment Relations Division's responses to the performance audit conducted by the Legislative Audit Division for the Subsequent Injury Fund are as follows:

1.A. Concur, Previous spreadsheets documenting the SIF Assessment did contain notes explaining where amounts came from to calculate the assessment. These notes were clear to the preparer and management who were accustomed to reviewing the assessment calculations, but less useful to the preparer's successor. Written instructions are currently being drafted and will be finalized by October 31, 2009, in advance of preparation for the next assessment period

1.B. Concur, Department management has always reviewed the SIF Assessment documentation prepared by the Compliance Specialist, but did not consistently have a sign off sheet documenting approval of the final assessment. A statement of review and approval, with management signatures, will be included with the SIF assessment documentation for subsequent assessment calculations.

1.C. Concur, The Department has already initiated the process of submitting the names and social security numbers of all certified applicants through a death audit service (CSRA Inc.) to confirm that certified individuals are still living and had provided accurate social security numbers with their applications. This death audit will be utilized annually. The Department will utilize the capabilities of its' own database to identify the other anomalies identified in the report, including multiple certified individuals at the same address, or a single individual having multiple addresses, or an individual filing SIF claims with more than one employer.

1.D. Concur. The Department has utilized the information detected in the death audit to begin clean up anomalies in it's database and will establish written procedures for evaluating and correcting, if necessary, identified anomalies by 12/31/09.

We would like to commend the audit committee (Steve Erb, Lisa Blanford, and Angie Grove) in providing a comfortable and non-confrontational platform to be evaluated from. The Subsequent Injury Fund program staff will implement the recommendations as stated. And look forward to working together in the future.

Sincerely,

Keith Kelly, Commissioner